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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re MELANIE L., a Person Coming  
Under the Juvenile Court Law.

B268992  
(Los Angeles County  
Super. Ct. No. DK11639)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LUIS L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los  
Angeles County. Terry T. Truong, Commissioner. Affirmed.

Jesse F. Rodriguez, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Sally Son, Senior Associate County Counsel, for Plaintiff and Respondent.

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Defendant and Appellant Luis L. (Father) appeals the juvenile court's jurisdictional findings and its order denying Father's request that his daughter, Melanie L. (Melanie), be placed with him pursuant to Welfare and Institutions Code section 361.2.<sup>1</sup> The juvenile court found dependency jurisdiction based both on evidence of domestic violence by Father and on evidence relating to substance abuse by Angelica R., Melanie's mother (Mother). The court's findings relating to the latter are not challenged on appeal. Thus, as Father recognizes, the juvenile court has jurisdiction over Melanie regardless of the outcome of this appeal.

At Father's request, we nevertheless consider his appeal of the juvenile court's jurisdictional findings concerning his domestic violence because those findings are closely related to the juvenile court's denial of his custody request. We conclude that substantial evidence supports both the juvenile court's jurisdictional findings and its dispositional order, and we therefore affirm.

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<sup>1</sup> Subsequent undesignated statutory references are to the Welfare and Institutions Code.

## **BACKGROUND**

### **1. Allegations and Juvenile Court Proceedings Concerning Mother's Conduct**

Prior to the events leading to the dependency proceedings, Melanie lived with Mother at the home of Melanie's maternal grandmother. Father had been deported to Mexico after serving time in prison for physical abuse of Mother.

On June 2, 2015, when Melanie was two years old, the Los Angeles County Department of Children and Family Services (Department) received a report concerning suspected neglect. Mother had dropped Melanie off at the home of Melanie's paternal grandmother (Maria) on May 31, 2015, promising to return the next day with food and clean clothes. Melanie was dirty when Mother dropped her off. Several days later Mother still had not returned to pick up Melanie.

Maria and other relatives told the Department that this recent conduct was a pattern. They suspected drug use. Maria also reported that Mother was constantly getting into physical altercations with family members and others. When Mother dropped Melanie off on May 31, Mother told Maria that she had a fight with her mother (Melanie's maternal grandmother) and that Mother was now homeless.

A county social worker interviewed Mother on June 3, 2015. Mother initially denied drug use, but later admitted using methamphetamines. Her boyfriend was also a drug user. Mother said that she was homeless as a result of a family dispute that led to a physical altercation with Melanie's maternal grandmother. Mother asked the social worker for help and consented to the Department's detention of Melanie.

The Department filed a dependency petition on June 8, 2015. The petition included one count (b-1), alleging that Mother's drug use made her unable to care for Melanie and seeking jurisdiction over Melanie under section 300, subdivision (b).<sup>2</sup> Following a detention hearing on June 8, 2015, the juvenile court ordered that Melanie be detained in Maria's home.

The juvenile court conducted a jurisdiction and disposition hearing with respect to Mother on August 11, 2015. Mother did not contest the allegations and agreed to a case plan. The court sustained count b-1, finding that Melanie was a person described in section 300, subdivision b, and ordered Melanie removed from Mother based upon clear and convincing evidence of a substantial danger if she were returned to Mother's physical custody. The court continued the jurisdiction and disposition hearing with respect to Father.

## **2. Allegations Concerning Father's Conduct**

On July 31, 2015, the Department filed an amended petition, adding a second count (b-2) concerning Father's domestic violence. That count alleged that Father had a "history of engaging in violent altercations" with Mother, and that Father had struck Mother "on numerous occasions causing her bruises on her face, chest and arms while she was pregnant with the child Melanie."

The jurisdiction and disposition hearing concerning Father took place on September 14, 2015. The Department's evidence

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<sup>2</sup> Count b-1 originally contained an allegation that Father knew of Mother's conduct but failed to protect Melanie. That allegation was later dismissed after the Department filed an amended petition adding a second count concerning Father's domestic violence (discussed below).

supporting its domestic violence allegations included police reports, the record of Father's conviction, and an interview with Mother. The police reports described three incidents of violence against Mother while she was pregnant with Melanie.

On February 6, 2012, Father came home intoxicated after watching the Super Bowl with friends the night before. Father and Mother began arguing when Father accused her of texting other men. When Mother attempted to telephone a friend to pick her up, Father yanked the telephone from her hand and forced her to the bed. He pulled her violently by the hair as she sat on the bed. When she stood up, he began punching her on the face, head, arms and legs. Mother fell stomach first onto the bed and Father punched her in the lower back so hard that she had difficulty breathing and began feeling pains in her stomach. She was four months pregnant with Melanie at the time. Mother escaped and called the police after Father fell asleep.

In the early morning of March 20, 2012, Mother was driving Father home from a restaurant where he had been drinking with friends. He became upset with her for continually asking to leave the restaurant and began to pull her hair and hit her while she was driving. Mother drove to the sheriff's station, parked the car, and began to walk toward the station. Father put his arms around her and attempted to carry her back to the car. She struggled, and he eventually let her go. Father drove off. Mother reported the incident to sheriff's deputies, and they provided her with an emergency protective order.

The next next day, March 21, 2012, she met Father so that she could retrieve her belongings. While they were both en route to the house, Mother received a call from a detective concerning her March 20 police report. Father demanded to know who was

on the phone, so Mother gave him the phone and Father spoke with the detective. After the call, Father told Mother that he needed to drive to a friend's house.

When they arrived at the friend's house, Father told Mother, " 'This is your chance to listen to me. I could fuck you up and kill the baby. So do what I tell you.' " He brought her inside the house and told her to sit in a chair while he spoke with his friend. Mother attempted to get up to call the police, telling Father she needed to go to the bathroom. Father pushed her back in the chair. When she tried to get up again, Father punched her in the left ear. The friend's roommate was present and told Father that she would call the police. Father drove off.

Father's friend told sheriff's deputies that he heard Father strike Mother and saw her crying and grabbing her ear. The friend also reported that he had spoken to Father before he and Mother came to his house. Father said, "Something came up," and that he was "leaving to Mexico today."

The juvenile court record also included a police report concerning a fight between Father and a former girlfriend in 2005. The fight led to their arrest for infliction of "corporal injury on each other in violation of [Penal Code section] 273.5." Father's girlfriend was three months pregnant at the time.

A Department investigator interviewed Mother on July 31, 2015. Mother told the investigator that she separated from Father because he would " 'just beat me up all the time.' " Mother said that Father " 'also had a history of domestic violence with his prior relationships, but I was the only one that would call the police on him.' "

When the investigator asked when Father had last hit her, Mother said that it was when she was about six months pregnant

with Melanie. She had gone with Father to Acapulco, where Father kidnapped her and beat her. She took his money when he was in the shower and came back to California. When Mother was about to give birth to Melanie, Father tried returning to the United States but he was arrested at the border on a warrant for domestic violence.

Father was convicted on November 7, 2012, for inflicting corporal injury on a spouse (Pen. Code, § 273.5) and other offenses, and was sentenced to 3 years 8 months in prison. He was deported to Mexico when he was released.

### **3. The Juvenile Court's Findings Concerning Father**

Father attended the September 14, 2015 jurisdiction and disposition hearing by telephone. He contested jurisdiction and requested custody of Melanie. Father argued that there was no evidence of domestic violence since March 2012; there was no evidence of any relationship between Mother and Father since that time; and there was no nexus between the prior domestic violence and a current risk to Melanie. Father also claimed that he was employed in Mexico and was willing and able to take care of Melanie and participate in any counseling that the Department might request.

The Department responded that the domestic violence was unresolved and that the reason for the lack of evidence of any current relationship between Mother and Father was that Father fled the country to avoid prosecution and was then deported. Melanie's counsel also requested that the court sustain count b-2, arguing that the evidence of domestic violence was clear and there was no evidence that Father "participated in any programs to fix that problem." Mother's counsel stated that the information in count b-2 was accurate.

The juvenile court found that there was a history of domestic violence between Father and Mother, and, “The only reason why there are not any more current incidents is because [Father] is not in this country.” The court concluded that Melanie would be in danger if placed with Father, “especially given the fact that there is no evidence presented before me that [Father] has resolved the domestic violence issue.” The court found by clear and convincing evidence that placement of Melanie with Father would be “detrimental to Melanie’s safety, protection, or physical or emotional well-being.” The court ordered Melanie “suitably placed,” noting that she is “currently placed with the paternal grandmother.”

### **DISCUSSION**

Father challenges both the juvenile court’s jurisdictional findings on count b-2 and the court’s dispositional order denying his request for custody of Melanie. Father acknowledges that the dependency court will retain jurisdiction over Melanie regardless of the result of this appeal. That is because dependency jurisdiction is established over the child, not the parents, so that a “ ‘jurisdictional finding good against one parent is good against both.’ ” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 308.) Because the juvenile court’s jurisdictional findings against Mother under count b-1 are not challenged on appeal, the court will retain jurisdiction regardless of the sufficiency of the evidence under count b-2.

Father requests that the court nevertheless exercise its discretion to consider the juvenile court’s jurisdictional findings under count b-2 because the findings determine whether or not he is considered an “offending” parent. He argues that his status as an offending parent affected his ability to assume custody of



Melanie and might also prejudice him in future dependency proceedings.

This court has the discretion to consider the juvenile court's findings concerning Father's conduct if those findings (1) serve as the basis for dispositional orders that are also challenged on appeal; (2) could be prejudicial to him or could potentially impact the current or future dependency proceedings; or (3) could have other consequences for him beyond jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.) Here, the juvenile court did not rely solely on its jurisdictional findings with respect to Father in denying his request for physical custody of Melanie, but also found, by clear and convincing evidence, that “placement with him would be detrimental” to Melanie. However, because the court's jurisdictional findings against Father are closely related to the risk of harm from placing Melanie with him, we exercise our discretion to review them.

We review the juvenile court's findings on both jurisdiction and disposition for sufficiency of the evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*); *In re E.B.* (2010) 184 Cal.App.4th 568, 578 (*E.B.*)). In doing so, we “‘draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.’” (*I.J.*, at p. 773, quoting *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) A finding supported by substantial evidence that is “reasonable in nature, credible and of solid value” will be upheld even though substantial evidence to the contrary also exists. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

**1. Substantial Evidence Supports the Juvenile Court’s Jurisdictional Findings Concerning Father**

As Father recognizes, jurisdiction can be found under section 300, subdivision (b) based upon a showing of a “substantial risk” of abuse or neglect even if the child has not actually been abused. (See *I.J.*, *supra*, 56 Cal.4th at p. 773.) Domestic violence against a parent may support the exercise of jurisdiction under section 300, subdivision (b), but only if there is evidence that “the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) “ ‘Both common sense and expert opinion indicate spousal abuse is detrimental to children.’ ” (*E.B.*, *supra*, 184 Cal.App.4th at p. 576, quoting *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5.) Children of abusive parents are more likely to be physically harmed themselves. (*E.B.*, at p. 576; cf. *I.J.*, *supra*, 56 Cal.4th at p. 778 [father’s sexual abuse of his daughter created a risk that he would also abuse his sons].)

The facts here are similar to those in *In re John M.* (2013) 217 Cal.App.4th 410 (*John M.*). In that case, this court upheld a juvenile court finding of jurisdiction under section 300, subdivision (b) based upon domestic violence, even though the child had not yet been injured. The parents had a history of verbal altercations and hitting each other. The immediate event leading to dependency court jurisdiction was an incident in which the father repeatedly hit the mother while they were driving home from a party and then continued to strike her when they arrived home. (*Id.* at pp. 417–419.) The father was prosecuted and received prison time for the incident. (*Ibid.*)

This court held that the father's history of domestic violence posed a substantial risk of harm to the child even though the current location of the mother was unknown. The court concluded that "father could engage in angry and violent behavior toward John without mother being present." (*John M.*, *supra*, 217 Cal.App.4th at p. 419.)

Similarly, here, the history of violence by Father against Mother supported the juvenile court's finding of a substantial risk to Melanie. The risk was heightened by the fact that Father had beaten Mother several times while she was pregnant with Melanie and had threatened to kill the unborn child. (See *In re M.M.* (2015) 240 Cal.App.4th 703, 720–721 [father's conduct in pushing mother to the floor when she was pregnant was a factor supporting the juvenile court's finding that the child was at substantial risk of harm].)

Father argues that there was insufficient evidence of a *current* risk of physical harm to Melanie because the domestic violence occurred three years before the dependency petition was filed and Mother and Father were no longer together. The passage of time since abusive conduct last occurred can be relevant to a juvenile court's determination of whether there is a current risk of injury. (See *In re M.W.* (2015) 238 Cal.App.4th 1444, 1454 [single incident of domestic violence seven years before the jurisdiction hearing was not evidence of a risk of future domestic violence where the parents were no longer together and the father was incarcerated].) However, the juvenile court here could properly consider the severity and repeated nature of Father's abusive conduct in assessing the likelihood of future harm, including the fact that Father was convicted and sent to prison because of it. (See *John M.*, *supra*, 217 Cal.App.4th at

p. 419 [“the severity of the July 2011 incident is not lessened by the fact that it was isolated and in the past; indeed, father was incarcerated for his conduct in that incident that resulted in mother’s injury”].)

Moreover, there was evidence that Father had engaged in domestic violence with others. He had been arrested in 2005 after an altercation with a prior girlfriend, and Mother told the Department that he had a history of unreported domestic violence in other relationships.

The juvenile court also reasonably considered the circumstances since the abuse occurred. The court noted that there was no evidence to suggest that Father’s propensity for violence had changed. Father had not done anything to resolve “the domestic violence issue,” but had simply been separated from Mother because he was deported. The evidence also showed that Father had previously denied striking Mother and had told the Department that Mother was the aggressor. A parent’s “current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs” are relevant factors in determining whether past conduct creates a risk of future harm. (*John M.*, *supra*, 217 Cal.App.4th at pp. 418–419.)

We conclude that the juvenile court’s jurisdictional findings are supported by substantial evidence.

## **2. Substantial Evidence Supports the Juvenile Court’s Dispositional Order**

Under section 361.2, subdivision (a), when a court orders removal of a child from a parent, the court must “first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that

brought the child within the provisions of Section 300, who desires to assume custody of the child.” If such a parent requests custody, “the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a).) A finding under this section that placement with the noncustodial parent would be detrimental to the child must be based on clear and convincing evidence. (*John M.*, *supra*, 217 Cal.App.4th at p. 420; *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1829.)

There is a split in authority as to whether the requirements of section 361.2, subdivision (a) apply only to “nonoffending,” noncustodial parents. Some courts have interpreted the statute to exclude offending parents, i.e., parents whose conduct brought the child within the description of section 300. (See *In re A.A.* (2012) 203 Cal.App.4th 597, 608; *John M.*, *supra*, 217 Cal.App.4th at pp. 424–425.) Other courts have concluded that the plain language of section 361.2, subdivision (a) does not distinguish between “offending” and “nonoffending” parents. (*In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1505–1506 (*Nickolas T.*); *In re D’Anthony D.* (2014) 230 Cal.App.4th 292, 300–303 (*D’Anthony D.*).) We need not analyze these conflicting opinions here because the juvenile court in this case did not simply rely upon Father’s status as an offending parent in denying his request for custody of Melanie. Rather, consistent with section 361.2, the court found clear and convincing evidence that placement of Melanie with Father would be detrimental to

Melanie’s “safety, protection, or physical or emotional well-being.”<sup>3</sup>

In doing so, the juvenile court could properly rely upon the same *evidence* concerning Father’s abusive conduct that supported dependency jurisdiction under count b-2. “ ‘If a noncustodial parent is in some way responsible for the events or conditions that currently bring the child within section 300—in other words, if the parent is an “offending” parent—those facts may constitute clear evidence of detriment under section 361.2, subdivision (a).’ ” (*D’Anthony D.*, *supra*, 230 Cal.App.4th at p. 302, quoting *Nickolas T.*, *supra*, 217 Cal.App.4th at p. 1505.) An evaluation of detriment under section 361.2 “requires that the court weigh all relevant factors to determine if the child will suffer net harm,” including the child’s emotional as well as physical well-being. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1425.) In that sense the standard is broader than the requirement for finding jurisdiction under section 300,

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<sup>3</sup> This language in the juvenile court’s oral findings tracks section 361.2, subdivision (a). However, the court’s minute order cites section 361, subdivision (c) and repeats the language of that section in stating that, based on clear and convincing evidence, substantial danger “exists to the physical health of minor(s) and/or minor(s) is suffering severe emotional damage, and there is no reasonable means to protect without removal from parent’s or guardian’s physical custody.” This discrepancy is not material to this appeal because even if the juvenile court relied upon section 361 rather than section 361.2 in its placement order, any error was harmless. The statutory requirements under both sections are similar, and the same evidence was relevant to both. (See *D’Anthony D.*, *supra*, 230 Cal.App.4th at p. 304 [holding that the juvenile court’s reliance upon section 361 rather than section 361.2 in denying a custody request was harmless].)

subdivision (b). The evidence of past abuse and associated risk of future harm to Melanie underlying the juvenile court's jurisdictional findings on count b-2 amply support its dispositional order as well.

**DISPOSITION**

The juvenile court's jurisdictional findings and dispositional order are affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.